

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket No. [Insert Docket]
)	
Genentech, Inc.)	AGREEMENT AND COVENANT
1 DNA Way)	NOT TO SUE
South San Francisco)	
California 94080)	Health & Safety Code
)	Sections 25100 et seq.,
)	25300 et seq.,
)	58009 and 58010
)	

I. INTRODUCTION

1.1. Parties. This Agreement and Covenant Not to Sue (Agreement) is made and entered into by and between the State of California, California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) and Genentech, Inc. (Settling Respondent), hereinafter collectively referred to as the "Parties".

1.2. Site. This Agreement applies to the site located at 450 East Grand Avenue, South San Francisco, San Mateo County, California (Site). A legal description of the Site is attached as Exhibit A. A map showing the Site is attached as Exhibit B.

1.3. Jurisdiction. DTSC enters into this Agreement pursuant to Health and Safety Code, division 20, chapter 6.5, section 25100 et seq., chapter 6.8, section 25300 et seq., 58009 and 58010. DTSC has authority to enter into agreements whereby DTSC covenants not to sue or assert claims for environmental remediation against prospective purchasers of environmentally impacted properties, if such agreements are sufficiently in the public interest.

1.4. Purpose. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections V. Covenants Not to Sue and VIII. Certification, the potential liability of the Settling Respondent for the Existing Contamination (hereinafter defined) at the Site which would otherwise result

from the Settling Respondent becoming the owner of the Site.

The Parties intend and believe that, based upon competent engineering and other data previously considered, the intended uses (and all activities anticipated to be undertaken in connection therewith) will not exacerbate or contribute to the Existing Contamination (hereinafter defined) or pose health risks to persons present at the Site.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondent.

The Settling Respondent has negotiated a long-term lease agreement with the present owner of the Site, Slough SSF, LLC (Present Property Owner) and will likely exercise an option to purchase the Site at the expiration of the lease term. The Settling Respondent anticipates occupying a total of approximately 784,000 square feet of new space, including eight new combined laboratory/office buildings, a child care center, a fitness center and two parking structures. The Settling Respondent also anticipates accommodating an estimated additional 1,800 to 2,000 highly-compensated biopharmaceutical industry employees, generate significant tax revenues and boost the local economy.

The resolution of the Settling Respondent's potential liability, in exchange for the Settling Respondent's provision of a substantial benefit to DTSC and to the State, is in the public interest. DTSC has determined that this Agreement is fair, reasonable and in the public interest.

This Agreement shall be subject to the Settling Respondent's execution of a Master Lease Agreement with the Present Property Owner for a duration of more than 12 years. The Parties understand that pursuant to the Master Lease Agreement, individual building leases for terms of no less than 12 years will also be entered into for eight separate buildings. If the Settling Respondent fails to execute the Master Lease Agreement with the Present Property Owner, the Agreement shall be null and void and DTSC reserves all rights it may otherwise have against the Settling Respondent.

1.5 Obligation of the Present Property Owner. The Present Property Owner will be responsible for the operation and maintenance of the final remedies selected for the soil and

groundwater at the Site. The Present Property Owner will enter into an Operation and Maintenance Agreement with DTSC upon the completion of the final remedy for groundwater by Cherokee San Francisco, LLC and Cherokee Grand Avenue, LLC (Cherokee), and after the completion of any required construction of the remedy for the Site (including the installation of the cap concurrent with the construction of the buildings covered by the Site Plan attached as Exhibit C. The Operation and Maintenance Agreement will provide for adequate financial assurance in accordance with California Code of Regulations, title 22, section 66265.143 for the operation and maintenance activities required by DTSC-approved Site Management Plan and Operation and Maintenance Plan and any revision thereof. The Present Property Owner will enter into a Land Use Covenant or amend the existing Land Use Covenant, if necessary, after the issues related to the proposed child care center are resolved. The Present Property Owner will cooperate with DTSC to ensure that all site activities, including any required corrective action activity, response action activity and operation and maintenance activity, will be carried out in accordance with applicable laws, regulations and guidance documents. A commitment letter from the Present Property Owner to DTSC and the Settling Respondent, dated February 11, 2005, memorializing the Present Property Owner's commitment to comply with Section 1.5 of this Agreement is attached as Exhibit D.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in the Health and Safety Code or in regulations promulgated under the Health and Safety Code shall have the meaning assigned to them in the Health and Safety Code or in such regulations, including any amendments thereto.

2.1. "DTSC" shall mean the State of California, Environmental Protection Agency, Department of Toxic Substances Control and any successor departments or agents of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement.

2.2. "Existing Contamination" shall mean any contamination caused by any hazardous substance, hazardous waste, pollutant or contaminant, present or existing at, on, under, or emanating from (including within the groundwater beneath) the Site as of the Effective Date of this Agreement, including without limitation, the contamination identified in or reasonably discernible from the following documents. "Existing Contamination" includes the passive migration of any hazardous

substance, hazardous waste, pollutant or contaminant that have been released, spilled, or disposed of before the Effective Date of this Agreement.

(a) Statement of Basis for Soil Remediation at the O'Brien Corporation's facility, prepared by USEPA, July 1999;

(b) Final Phase II RCRA Investigation, prepared by Harza, May 31, 1996;

(c) Soil Quality Report for Due Diligence Evaluation of Genentech Property, prepared by Harza, 1994;

(d) Eastern Property and Southern Property Boundary Groundwater Sampling, prepared by Henshaw Associates, February 24, 2000;

(e) Corrective Measures Completion Report, prepared by Henshaw Associates, Inc., September 11, 2000;

(f) Hydrogeological Assessment Report of Waste Discharge, Former Surface Impoundment Area, prepared by the Mark Group, December 21, 1987;

(g) RCRA Facility Assessment, prepared by A.T. Kearney, Inc. and Science Applications International Corporation, December 1987;

(h) Site Assessment Report: Fuller O'Brien Paint Plant, prepared by the Mark Group, February 28, 1990;

(i) Final Phase II RCRA Facility Investigation Report, prepared by Harza, May 31, 1996;

(j) Revised Phase III RCRA Facility Investigation Workplan/Current Conditions Report, prepared by EnviroAssets, February 15, 2002;

(k) Groundwater Quality and Appropriate Groundwater Standards Evaluation, 450 East Grand Avenue, South San Francisco, CA, prepared by EnviroAssets, July 27, 2002; and

(l) Additional Groundwater Investigation Summary Report: 450 East Grand Avenue, South San Francisco, CA, prepared by EnviroAssets, November 7, 2003.

(m) December 9, 2004 letter report prepared by Geosyntec Consultants, titled "Evaluation of Methane in Soil Gas".

(n) Data Evaluation - Soil Gas Investigation, Britannia East Grand Office Park Development, 450 E. Grand Avenue, South San Francisco, prepared by Geomatrix Consultants, December 9, 2004.

2.3. "Land Use Controls" shall mean recorded instruments restricting the present and future uses of the Site, including but not limited to, recorded easements, covenants, restrictions or servitudes, or any combination thereof, as appropriate. Land use controls shall run with the land from the date of recordation, pursuant to Health and Safety Code section 25355.5, shall bind all of the owners of the land, and their heirs,

successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees, and shall be enforceable by DTSC pursuant to Health and Safety Code, sections 25355.5 and 25356.1.

2.4. "Notice" shall refer to that notice, in the form of Exhibit E hereto, to be executed by each successor and/or transferee of the Site owner and Occupant wishing to claim the benefits of DTSC's Covenant Not to Sue pursuant to Section 9.22 Notices hereof.

2.5. "Parties" shall mean the State of California, California Environmental Protection Agency, Department of Toxic Substances Control, and the Settling Respondent.

2.6. "Settling Respondent" shall mean Genentech, Inc.

2.7. "Site" shall mean the Site which is described in Exhibits A and B of this Agreement.

III. FINDINGS OF FACT

DTSC hereby finds:

3.1. Ownership. The Site is owned by Slough SSF, LLC.

3.2. Site History. The Site consists of approximately 27 acres in an area described as the "Shoreline Manufacturing Zone" in the East of 101 Area Plan prepared by the City of South San Francisco, which allows for heavy industrial, commercial and office parks and prohibits residential development. Various paint manufacturing operations were conducted on all or portions of the Site from approximately 1898 to mid-2002. Paint manufacturing operations at the Site began with the operations of the W.P. Fuller and Company (approximately 1898 to 1968), followed by the operations of the O'Brien Corporation (1968 to 1999) and (on a portion of the Site) ICI Glidden (from 1995 through approximately mid-2002). The Steiger Terra Cotta Pottery Works also operated on a portion of the Site from approximately 1894 to 1927. The O'Brien Corporation managed hazardous waste at the Site pursuant to an Interim Status document issued on December 11, 1981 by the California Department of Health Services, DTSC's predecessor agency. Cherokee purchased the Site in 1999 and assumed all environmental responsibilities for the Site. The O'Brien Corporation conducted closure activities and corrective action to address release of hazardous waste at or from the Site under the oversight of United States Environmental

Protection Agency (USEPA). In August 1999, DTSC approved the closure of six hazardous waste management units that were regulated under the Resource Conservation and Recovery Act (RCRA). USEPA issued the selection of final remedy for soil in April 2000. In September 2000, DTSC assumed the lead oversight agency role and has been overseeing corrective action at the Site, particularly the investigation and remediation of groundwater contamination. Slough SSF, LLC purchased the Site in December 2000. DTSC received a letter, dated November 9, 2001, jointly sent by the Present Property Owner and Cherokee proposing division of responsibility for the ongoing corrective action activities at the Site.

3.3. Substances Found at the Site. The hazardous substances and hazardous wastes found in soil at the Site include lead, petroleum hydrocarbons, methane, benzene and polynuclear aromatic hydrocarbons. The hazardous substances and hazardous wastes found in groundwater include petroleum hydrocarbons, low concentrations of selected metals (nickel and chromium) and chlorinated solvents.

3.4. The Settling Respondent represents, and for the purposes of this Agreement DTSC relies on those representations, that the Settling Respondent's involvement with the Site will be limited to the occupation and use of the Site as an auxiliary biopharmaceutical campus adjoining its existing campus in South San Francisco. Current development plans envision that the Site will have eight new combined laboratory/office buildings, a child care center, a fitness center and two parking structures.

IV. AGREEMENT

4.1. The Settling Respondent agrees to comply with all Land Use Covenants and Controls and any subsequent amendments as required by or entered into with DTSC.

4.2. The Settling Respondent agrees to comply with the requirements of the Site Management Plan and any subsequent amendments or other plans as required or approved by DTSC.

4.3. The Settling Respondent agrees to allow access to DTSC and parties working with DTSC for the implementation of any required environmental monitoring or response action at the Site in accordance with Section 9.1 of this Agreement. The Settling Respondent further agrees not to interfere with any response actions required at the Site.

4.4. The Settling Respondent agrees to exercise due care to the extent provided in Section VII of this Agreement.

V. ~~COVENANTS NOT TO SUE~~

5.1. DTSC's Covenant Not to Sue. Subject to Sections 5.2. Reservation of Rights and 5.3. Reservation of Rights as to Unknown conditions or New Information of this Agreement, DTSC covenants not to sue or take any civil, judicial or administrative action, to pursue any claim, enter any order or make any demand against the Settling Respondent for claims pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607; section 7003 of RCRA; 42 U.S.C. § 6973; or chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with section 25301), division 20 of the Health and Safety Code, or pursuant to other applicable laws, regulations or civil, judicial or administrative authorities, solely with respect to the Existing Contamination at the Site and arising solely from the Settling Respondent's ownership, lease, operation and/or possession of the Site, or any portion thereof. This Covenant shall inure to the benefit of, and pass with each and every portion of the Site and shall benefit the Settling Respondent's successors and assignees of all or any portion of the Site of which the Settling Respondent is or becomes an owner. Upon written request, DTSC may, in its sole discretion, authorize this Covenant to inure to the benefit of a successive lessee or sublessee of all or any portion of the Site.

5.2. DTSC's Reservation of Rights. The covenant not to sue set forth in Section 5.1. above does not pertain to any matters other than those expressly specified in Section 5.1 DTSC Covenant Not to Sue. DTSC reserves and this Agreement is without prejudice to all rights against the Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by the Settling Respondent or its successors or assignees to meet a requirement of this Agreement;

(b) any liability resulting from past or future releases of hazardous substance, hazardous wastes, pollutants or contaminants, at or from the Site caused or contributed to by the Settling Respondent or its successors or assignees;

(c) any liability resulting from exacerbation by the Settling Respondent or its successors or assignees of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, hazardous wastes, pollutants or

contaminants, at the Site after the Effective Date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by agencies other than DTSC;

(g) liability for transportation and disposal after the Effective Date of this Agreement by the Settling Respondent or its successors or assignees; and

(h) liability for violations of local, state or federal law or regulations.

DTSC's reservation of rights set forth in subsections (a), (b), (c), (d), (g), and (h) extend only to claims or causes of action against the Settling Respondent or its successor or assignee, based on an act or omission of that party.

5.2.1. With respect to any claim or cause of action asserted by DTSC, the Settling Respondent and/or its successors and assignees shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

5.2.2. If the Settling Respondent and/or any successor or assignee is determined, through adjudication or the administrative or the regulatory processes, to have committed an act or omission after the Effective Date for which DTSC has specifically reserved its rights in (a) through (h) above, the Settling Respondent (if it was so determined to have committed the act or omission), or the particular successor or assignee that was determined to have committed the act or omission, shall be liable for all enforcement costs including, but not limited to, litigation costs, incurred by DTSC in conjunction with that act or omission.

5.2.3. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which DTSC may have against any person, firm, corporation or other entity not a party to this Agreement.

5.2.4. Nothing in this Agreement is intended to limit the right of DTSC to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent and/or any successor and assignee to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which

may be taken or be required by DTSC in exercising its authority under federal and state law. ~~The Settling Respondent and DTSC~~ acknowledge that the Settling Respondent will lease the Site where response actions may be required and may exercise an option to purchase the Site at a later time.

5.3. DTSC' Reservation of Rights as to Unknown Conditions or New Information. The covenant not to sue set forth in Section 5.1. does not apply (and DTSC reserves the right to seek modification of this Agreement or to institute an action under federal or state law, or to take administrative action against any person), if previously unknown conditions are discovered or information is received, in whole or in part, after the Effective Date, and these previously unknown conditions or this new information demonstrate that the Settling Respondent or a particular successor or assignee is liable under applicable law for the Existing Contamination for reasons other than that liability that may be incurred solely by virtue of holding, acquiring or leasing an interest in all or any portion of the Site or operating thereon (as is expressly contemplated in Section 1.4 above). This reservation shall apply only to the ~~Settling Respondent or a successor or assignee with respect to~~ whom such unknown conditions discovered hereunder pertain.

5.4. Settling Respondent's Covenant Not to Sue. In consideration of DTSC's Covenant Not To Sue in Section 5.1. of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against DTSC, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to: (i) any direct or indirect claim for reimbursement from DTSC or the State of California; (ii) any claim against DTSC or the State of California under sections 107 or 113 of CERCLA or section 7003 of RCRA; (iii) any other claims arising out of response activities at the Site, including but not limited to nuisance, trespass, takings, equitable indemnity and indemnity under California law, or strict liability under California law, based on DTSC's oversight activities or approval of plans for such activities. This Covenant is made and given, effective upon execution by the Settling Respondent of this Agreement and of a Notice by each successor and assignee, and does not extend to or bind any other persons.

5.5. Settling Respondent's Reservation of Rights. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against DTSC based on gross negligence or willful misconduct taken directly by DTSC, not including

oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to the applicable state laws, CERCLA, or RCRA.

VI. CONTRIBUTION PROTECTION

6.1. With regard to claims for contribution against the Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. §9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by DTSC or any other person for the Site with respect to the Existing Contamination.

6.2. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify DTSC in writing no later than sixty (60) days prior to the initiation of any such suit or claim.

6.3. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing DTSC within ten (10) days of service of the complaint on it.

VII. DUE CARE/COOPERATION

7.1. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations.

7.2. In the event that the Settling Respondent is required by DTSC to conduct response actions at the Site, the Settling Respondent shall comply with all obligations needed to perform any necessary response action and maintain the final remedy, including any required operation and maintenance activities and land use controls.

7.3. The Settling Respondent recognizes that the implementation of any corrective action or response action at the Site may interfere with the Settling Respondent's use of the Site, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with DTSC in the implementation of any required corrective action or

response action, and agrees not to interfere with the ongoing corrective action activities or with the Present Property Owner's maintenance of the final remedy, including operation and maintenance activities and land use controls.

7.4. DTSC agrees, consistent with its responsibilities under applicable law, to use reasonable efforts (as determined by DTSC) to minimize any interference with the Settling Respondent's operations by such entry and response. With respect to the buildings on the Site (including their interiors) and any portion of the Site under the control of the Settling Respondent, in the event the Settling Respondent becomes aware of any action or occurrence that first occurs after the effective date of this Agreement and which causes or threatens a release of hazardous substances, hazardous wastes, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under the Health and Safety Code, or any other law, immediately notify DTSC of such release or threatened release, unless the Present Property Owner is already taking all such actions in a timely manner.

VIII. CERTIFICATION

8. By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DTSC all information known to the Settling Respondent and all analytical data or other non-privileged information in the possession or control of its officers, directors, employees, contractors and agents which documents or defines any Existing Contamination or any past or potential future release of hazardous substances, hazardous wastes, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances, hazardous wastes or pollutants or contaminants at the Site. If DTSC determines, within its sole discretion, that information provided by the Settling Respondent is not materially accurate and complete, the Covenant Not to Sue in Section V of the Agreement shall be null and void and DTSC reserves all rights it may otherwise have against the Settling Respondent.

IX. GENERAL PROVISIONS

9.1. Site Access. As long as the Settling Respondent has control or possession of the Site as a lessee or property owner, it agrees to provide access to the Site under this Agreement at all reasonable times to employees, contractors, and consultants of DTSC. Nothing in this section is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of the Settling Respondent in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying any data submitted to DTSC by the Settling Respondent.

9.2. Site Access for Respondents Conducting Response Activities. The Settling Respondent shall grant reasonable access, as determined by DTSC, to parties conducting response activities at the Site or for activities deemed necessary by DTSC to complete required response activities. The Settling Respondent shall ensure that a copy of this Agreement is provided to any subsequent lessee or sublessee on the property as of the Effective Date of this Agreement and shall ensure that any subsequent leases or subleases in the Site are consistent with this Section, and Section 9.25 Parties Bound, of this Agreement.

9.3. Cost Recovery. For releases other than the Existing Contamination, and in the event that the Settling Respondent or its agents cause, contribute to, or otherwise are found responsible for any release of hazardous substances or hazardous wastes: (a) the Settling Respondent is liable for all of DTSC's costs incurred in responding to the contamination at the Site including costs of overseeing response work performed by the Settling Respondent for matters addressed by this Agreement, including costs incurred by DTSC in association with preparation of this Agreement, and costs to be incurred in the future; (b) Cost recovery may be pursued by DTSC under CERCLA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law; and (c) the State of California reserves the right to bring an action against the Settling Respondent under CERCLA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law, for recovery of all response and oversight costs incurred by the State of California related to this Agreement and not reimbursed

by the Settling Respondent, as well as any other unreimbursed past and future costs incurred by the State of California in connection with response activities at the Site.

9.4. Future Costs. For releases other than the Existing Contamination, and in the event that the Settling Respondent or its agents cause, contribute to, or otherwise are found responsible for any release of hazardous substances or hazardous wastes, with respect to DTSC's review of response activities performed by the Settling Respondent pursuant to this Agreement: (a) the Settling Respondent shall pay all costs of DTSC's review of activities by the Settling Respondent or the Settling Respondents' agents under this Agreement and/or related to this Agreement, including all direct and indirect costs, as such costs are incurred; and (b) the Settling Respondent shall remain liable under applicable law for all costs incurred by DTSC for matters addressed by this Agreement as specified by Health and Safety Code section 25360, including interest thereon as provided by law.

DTSC shall bill the Settling Respondent on a quarterly basis for response and oversight costs incurred during the previous quarter. DTSC shall provide the Settling Respondent with a summary description of DTSC's oversight activities for which it seeks oversight costs. The Settling Respondent shall maintain the right to review and make copies of documentation supporting the costs claimed by DTSC, and any other rights provided to persons upon which DTSC seeks to impose such oversight costs. Subject to those rights, the Settling Respondent shall remit payment as specified in the billing within sixty (60) days of the date of the billing.

9.5. Agreement Negotiation Costs. The Settling Respondent agrees to pay DTSC for its costs incurred in evaluating, negotiating, preparing and processing this Agreement, even if such costs are incurred prior to the Effective Date of this Agreement.

9.6. Payment. All payments made by the Settling Respondent pursuant to this Agreement shall be by a cashier's or certified check made payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the site (site # 520042) and the docket number of this Agreement. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier

400 P Street, 4th Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager/Regional Branch Chief.

9.6.1. If any bill is not paid by the Settling Respondent within sixty (60) days after it is sent by DTSC, the Settling Respondent may be deemed to be in material default of this Agreement.

9.7. Submittals. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or communication such as certified mail, overnight delivery service, facsimile transmission or courier hand delivery service:

Mohinder Sandhu, Branch Chief
Standardized Permitting
and Corrective Action Branch
Attention: Gregory Honzay [two copies]
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

Settling Respondent:
General Counsel
Genentech, Inc.
Legal Department
1 DNA Way
South San Francisco, California 94080-4990

With a copy to:

Jon Bergschneider
Slough SSF, LLC
400 Oyster Point Boulevard, Suite 409
South San Francisco, California 94080

For the purposes of this Section, DTSC and the Settling Respondent shall provide sufficient notification to each other regarding any change in the name or address of the contact person for DTSC or the Settling Respondent.

9.8. Communications. All approvals and decisions of DTSC made regarding submittals and notifications will be communicated to the Settling Respondent in writing by the Branch Chief, Standardized Permitting and Corrective Action Branch, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Settling Respondent shall be construed to relieve the Settling Respondent of the obligation to obtain such formal approvals as may be required.

9.9. Compliance with Applicable Laws. The Settling Respondent shall carry out this Agreement in compliance with all applicable state, local, and federal laws, regulations and requirements including, but not limited to, requirements to obtain permits and to assure worker safety.

9.10. Record Retention. In the event that the Settling Respondent is required by DTSC to conduct response actions at the Site, the Settling Respondent shall preserve all data, reports and other documents for a minimum of ten (10) years after the conclusion of all the response action activities that the Settling Respondent is required to conduct under this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, the Settling Respondent shall either comply with that request or deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. The Settling Respondent shall notify DTSC in writing, at least six (6) months prior to destroying any documents prepared pursuant to this Agreement and shall provide DTSC with an opportunity to copy any documents at the expense of DTSC.

9.11. Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the Settling Respondent, or related parties specified in Section 9.20, Parties Bound, in carrying out activities pursuant to this Agreement, nor shall the State of California be held as party to any contract entered into by the Settling Respondent or its agents in carrying out activities pursuant to this Agreement.

9.12. Additional Actions. By entering into this Agreement, DTSC does not waive the right to take any further actions authorized by law.

9.13. Severability. The requirements of this Agreement are severable, and the Settling Respondent shall comply with each and

every provision hereof, notwithstanding the effectiveness of any other provision.

9.14. Modifications. This Agreement may be amended in writing by mutual agreement of DTSC and the Settling Respondent. Any amendment to this Agreement shall be effective upon the date the modification is signed by DTSC and shall be deemed incorporated in this Agreement.

9.15. Time Periods. Unless otherwise specified, time periods begin from the Effective Date of this Agreement and "days" means calendar days.

9.16. Effective Date. The Effective Date of this Agreement is the date when this Agreement is fully executed.

9.17. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

9.18. Third Party Actions. In the event that the Settling Respondent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, the Settling Respondent shall notify DTSC in writing within ten (10) days after service of the complaint in the third-party action. The Settling Respondent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

9.19. Governing Law. This Agreement shall be construed and governed by the laws of the State of California.

9.20. Parties Bound. This Agreement shall apply to and be binding upon DTSC, and shall apply to and be binding on the Settling Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. Each signatory of a party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such party.

9.21. Transfer. Notwithstanding any other provisions of this Agreement, all of the rights and benefits conferred upon the Settling Respondent under this Agreement may be assigned or transferred to any person pursuant to Section 9.22, Notices. In the event of an assignment or transfer of all or any portion of the Site or an assignment or transfer of an interest in all or any portion of the Site (not including financing arrangements or security interests), the Settling Respondent shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement.

9.22. Notices. Prior to or simultaneous with any assignment or transfer of all or any portion of the Site (not including financing arrangements or security interests), the assignee or transferee shall as a precondition to receiving the benefit of the DTSC's Covenant Not to Sue, execute a written instrument in the form attached hereto as Exhibit E, which shall accompany each purchase relating to the Site.

9.23. Representative Authority. Each undersigned representative of the Parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the Parties to this Agreement.

9.24. Certain Private Party Rights Reserved. Nothing in this Agreement is intended to, and it shall not, affect or alter or nullify any of the private contractual rights between the Present Property Owner and the Settling Respondent, which rights are expressly preserved; provided, however, that these private contractual rights do not alter, affect, or interfere with the obligations of the Settling Respondent (or any person or entity wishing to claim the benefits of DTSC's Covenant Not to Sue) to DTSC under this Agreement.

9.25. Exhibits All exhibits attached to this Agreement are incorporated herein by this reference.

X. NOTICE OF SETTLEMENT

10. This Agreement shall be subject to a thirty-day comment period, after which DTSC may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate. The Settling Respondent shall prepare the notice for the thirty-day comment period; the notice shall require that all comments be forwarded

simultaneously to the Settling Respondent and DTSC.

IN WITNESS WHEREOF, the Parties execute this Agreement
as of the date set forth below.

//original signed by//

2/16/05

Gary P. Van Housen
Corporate Counsel
Genentech, Inc.

Date

//original signed by//

4/18/05

Barbara Coler, Division Chief
Permitting and Corrective Action
Division
Department of Toxic Substances
Control

Date